

REMARKS

Claims 1-19 remain in the referenced application. The Examiner has rejected claims 1-6, 8-14, and 16-19, and has objected to claims 7 and 15. The Applicant has amended claims 1, 2, 4, 5-7, 11, 12-15, 17, and 19.

Claim 4 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant's original claim 4 recited a limitation "paddlewheel" without sufficient antecedent basis. Applicant has amended claim 4 to delete the reference to the "paddlewheel," and has inserted the limitation "truncated conical body." The limitation "truncated conical body" has sufficient antecedent basis, and therefore, is not indefinite. Applicant respectfully requests that the rejection of claim 4 under 35 U.S.C. §112, second paragraph, be withdrawn.

Claim 11 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant's original claim 11 recites the limitation "symmetrical in the radial direction" in line 2. Applicant has amended claim 11 to depend from claim 4, and has further added the limitations, "wherein the tangs are symmetrical about a plane extending radially from the axis, and through a midpoint of the tangs." Applicant has disclosed that the tangs are "symmetrical about a midpoint" in the specification, and has further specified the tangs are disposed along the outer periphery of the truncated conical body, and therefore, are disposed radially about the axis of the truncated cone. Accordingly, a plane of symmetry must extend through the axis of the truncated conical body and the midpoint of the each tang. Applicant respectfully requests that the rejection of claim 11 under 35 U.S.C. §112, second paragraph, be withdrawn.

Claim 19 stands rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner asserts that the limitation, “the primary face is symmetrical to the secondary face along the outer periphery” in lines 1-2, is unclear as to what line the two faces are symmetric with respect to. Applicant has amended claim 14 to define a plane of symmetry for the tangs disposed along the outer periphery of the truncated conical body. Applicant’s amended claim 14 now recites, “wherein the tangs are substantially symmetrical through a plane passing through the axis of the truncated cone and a midpoint of each tang.” Claim 19 depends from claim 14, and has been amended to clarify the symmetry relationship between the primary face and the secondary face. Applicant’s amended claim 19 now recites, “wherein the primary face of a respective tang is substantially symmetrical to the secondary face of the respective tang through the plane passing through the axis of the truncated body and the midpoint of each tang.” Applicant respectfully asserts that the symmetry relationship between the primary face and the secondary face is now clearly defined, and no longer indefinite. Accordingly, Applicant respectfully requests that the rejection under 35 U.S.C. §112, second paragraph, be withdrawn.

Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by Utter (U.S. Patent Number 5,104,007 - hereinafter referred to as “Utter”). The Examiner asserts that Utter discloses a paddlewheel with a primary face and a secondary face attached at one end that is capable of moving a product in a first direction and a second direction. The Examiner has further asserted that Utter’s tangs 116 have two sides, each capable of moving ice in a different direction. Applicant respectfully contends that Utter does not disclose a paddlewheel capable of moving ice in different directions. Applicant respectfully asserts that it is improper for the

Examiner to cite Utter as disclosing a dual direction paddlewheel, as Utter does not teach rotating his paddlewheel in two directions.

Nevertheless, Applicant contends that Utter discloses “L-shaped scoops” that “lift ice upward to a point vertically thereabove,” (Col. 5, Line 27). Utter’s “L-shaped scoops” include a body 120, a foot 122, and a face 121 disposed at an acute angle “B.” A second face lies on the back side of the body 120, and is disposed parallel to the axis of the paddlewheel (Fig. 6). Applicant respectfully asserts that the first face 121 and the second face (back face of body 120) clearly are markedly different in size, configuration, and angle of inclination. As such, Utter’s “L-shaped scoops” can only move ice in one direction, as only one face of the “L-shaped scoops” is capable of lifting ice. The secondary face pointed out by the Examiner, is parallel to the axis of the paddlewheel, and does not include a leg for scooping. Applicant further respectfully asserts that if the secondary face pointed out by the Examiner is sufficient to “lift” ice, then Utter would not have needed an “L-shape” at all, as the flat sides should have been sufficient for the “lifting.”

Applicant has amended claim 1 to include the recitation of “a primary face; and a secondary face substantially symmetrical to the primary face, wherein the primary face is adapted to move a product a first direction, and the secondary face is adapted to move the product in a second direction.” Applicant contends that Utter does not disclose a primary face and a secondary face that are symmetrical, and therefore, cannot anticipate Applicant’s amended claim 1. Utter discloses “L-shaped scoops” through which “ice is picked up by a tapered leading edge 123 or ‘lip’ of each foot 122 and delivered to face 121 of body 120,” (Col. 5, lines: 40-42). Accordingly, Utter’s “L-shaped scoops” are uni-directional, as only one side of the tang 116 includes a leading edge 123 to deliver ice to a face 121. Applicant respectfully contends that the

secondary face pointed out by the Examiner is a flat surface that is parallel to the axis of the paddlewheel, and does not include a leg for scooping. Utter, therefore, cannot anticipate Applicant's amended claim 1, as Applicant's amended claim 1 is drawn to a primary face and a secondary face that are substantially symmetrical, and move product in different directions. As such, Applicant's amended claim 1 is patentable over Utter, and Applicant respectfully requests that the rejection of claim 1 under 35 U.S.C. §102(b) be withdrawn.

Claim 8 stands rejected under 35 U.S.C. §102(b) as being anticipated by Utter. In rejecting claim 8, the Examiner asserts that Utter discloses tangs that can move ice (col. 1, lines 6-16). Claim 8 remains in its original form. Applicant respectfully asserts that the patentability of claim 8 lies with claim 1.

Claim 9 stands rejected under 35 U.S.C. §102(b) as being anticipated by Utter. In rejecting claim 9, the Examiner asserts that Utter discloses tangs that can move ice cubes. Claim 9 remains in its original form. Applicant respectfully contends that the patentability of claim 9 lies with the patentability of claims 1 and 8.

Claim 12 stands rejected under 35 U.S.C. §102 (b) as being anticipated by Utter. In rejecting claim 12, the Examiner asserts that, "Utter discloses a paddlewheel with a truncated conical body having an outer periphery with tangs (116), the tangs having a primary face and a secondary face each of which can move a product in either direction." Applicant respectfully contends that Utter discloses a rotor 46, that is, "integrally formed of a suitable material, such as polypropylene, and includes a generally circular plate 106 having a flat forward and rearward faces 108 and 110, a central hub 112 through which the rotor axis of rotation "A" passes, and an outer circumference partially defined by a cylindrical V-shaped annular wall 114 and provided with a plurality of radially outwardly extending flanges or scoops 116" (Col. 5, lines 1-8).

Applicant respectfully submits that Utter does not teach of a hub having an outer periphery along which tangs are disposed. Applicant further respectfully submits that a “hub” by definition is a central part of a wheel, and therefore, cannot house the Utter’s scoops, as the scoops are disposed along the outer periphery of the rotor.

Applicant has amended claim 12 to recite, “tangs disposed along the outer periphery of the truncated conical body, the tangs including a primary face coupled to a substantially symmetrical secondary face, wherein each face is equally adapted to move a product, and further wherein the truncated conical body may be rotated in either direction to move the product.”

Applicant respectfully submits that Utter does not disclose a paddlewheel including a primary face and a substantially symmetrical secondary face, as Utter discloses two markedly different types of faces. By definition, an “L-shaped” scoop for lifting a product includes a first side having a body and a leg, and a second side having a just a face of the body. Applicant further respectfully asserts that Utter’s scoops include a first face that is disposed between the legs of the “L-shape,” and a second face that is disposed on a back side of the “L-shape.” The interior portion of the L-shape is disposed at an angle, and the second face is disposed parallel with an axis of the flat plate. Applicant’s amended claim 12 is drawn to substantially symmetrical primary and secondary faces of a tang. Utter does not disclose a truncated conical body having an outer periphery including tangs having a primary face coupled to a substantially symmetrical secondary face. Accordingly, Applicant respectfully asserts that Utter cannot anticipate Applicant’s amended claim 12, and respectfully requests that the rejection of claim 12 under 35 U.S.C. § 102 (b) be withdrawn.

Claim 13 stands rejected under 35 U.S.C. §102(b) as being anticipated by Utter. In rejecting claim 13, the Examiner asserts that Utter discloses tangs including a primary face that

push product in a first direction. Applicant has amended claim 13. In amending claim 13, Applicant has drawn claim 13 to rotating the truncated cone. Applicant's amended claim 13 now recites, " wherein the paddlewheel rotates about an axis of the truncated cone." Applicant respectfully asserts that the patentability of claim 13 lies with the patentability of claim 12.

Claim 14 has been rejected under 35 U.S.C. §102(b) as being anticipated by Utter. In rejecting claim 14, the Examiner asserts that Utter discloses a secondary face that pushes the product in a second direction. Applicant has amended claim 14 to define a plane of symmetry between the primary face and the secondary face. Utter does not disclose a paddlewheel that includes a primary face substantially symmetrical to a secondary face through a plane passing through an axis of the truncated cone and a midpoint of the tang, and therefore, cannot anticipate Applicant's amended claim 14. Applicant, therefore, respectfully asserts that claim 14 is patentable over Utter, and respectfully requests that the rejection of claim 14 under 35 U.S.C. §102(b), be withdrawn.

Claim 17 stands rejected under 35 U.S.C. §102(b) as being anticipated by Utter. Claim 17 has been amended to depend from claim 15, and claim 15 has been rewritten in independent form. Claim 15 has been deemed patentable by the Examiner if rewritten in independent form, and therefore, amended claim 17 is patentable with amended claim 15. Accordingly, the rejection of claim 17 under 35 U.S.C. §102(b) is now moot.

Claim 18 stands rejected under 35 U.S.C. §102(b) as being anticipated by Utter. Claim 18 remains in original form. Applicant respectfully asserts that the patentability of claim 18 lies with the patentability of claim 12.

Claim 2 has been rejected under 35 U.S.C. §103(a) as being anticipated by Utter. In rejecting claim 2, the Examiner asserts that Utter discloses a primary face disposed at an angle to a secondary face. As previously argued for claim 1, the Applicant respectfully asserts that Utter does not disclose a primary face and a secondary face. Utter discloses “L-shaped scoops” disposed along an outer periphery of a disk. The Applicant has amended Claim 2 to further define a relationship between the primary face and the substantially symmetrical secondary face of Applicant’s amended claim 1, wherein the “primary face and the secondary face are disposed at an angle to each other.” Applicant respectfully asserts that Utter’s “L-shaped scoops,” by definition include only one leg, not a symmetrical tang, and therefore, cannot anticipate Applicant’s amended claim 2. Applicant respectfully contends that claim 2 is patentable over Utter, and respectfully requests that the rejection of claim 2 under 35 U.S.C. §103(a), be withdrawn.

Claim 3 has been rejected under 35 U.S.C. §103(a) as being anticipated by Utter. Claim 3 remains in its original form, and depends from claim 2. Applicant respectfully asserts that claim 3 is patentable over Utter along with amended claims 1 and 2, because Utter does not disclose “substantially symmetrical tangs.”

Claim 4 has been rejected under 35 U.S.C. §103(a) as being anticipated by Utter. Claim 4 has been amended to remove indefinite recitations as previously discussed. Claim 4 substantially remains in its original form, and depends from claim 3. Applicant respectfully asserts that claim 4 is patentable over Utter along with claims 1-3, because Utter does not disclose “substantially symmetrical tangs,” as cited in the arguments of claim 1.

Claim 5 has been rejected under 35 U.S.C. §103(a) as being anticipated by Utter. Claim 5 has been amended to depend from claim 1, and to further refine the relationship between the primary face and the secondary face of claim 1. Claim 5, as amended, is drawn to equivalent effective contact areas of each face. As previously argued, Utter does not disclose a primary face and substantially symmetrical secondary face, and therefore, cannot anticipate “equivalent effective contact areas” of the primary face and the substantially symmetrical secondary face. Utter discloses “L-shaped scoops” that include one angled face bounded by a leg, and one side not including a leg, wherein the second side is parallel to the axis of the body, “ thereby creating differing contact areas. Applicant’s invention is drawn to substantially symmetrical faces having equivalent effective contact areas. Applicant respectfully asserts that claim 5 is patentable over Utter along with Applicant’s amended claim 1, and respectfully requests that the rejection of claim 5 under 35 U.S.C. §103(a) be withdrawn.

Claim 6 is has been rejected under 35 U.S.C. §103(a) as being anticipated by Utter. Claim 6 has been amended to depend from claim 1, and to further refine the relationship between the primary face and the secondary face of claim 1. Claim 6, as amended, is drawn to a substantially same amount of product being delivered in either direction. As previously argued, Utter does not disclose a primary face and substantially symmetrical secondary face, and therefore, cannot anticipate “a same amount of product delivered in either direction,” as different shape deliver different amounts of product. Utter discloses “L-shaped scoops” that include one angled face bounded by a leg, and one side not including a leg, wherein the second side is parallel to the axis of the body, “ thereby creating differing contact areas. Applicant’s invention is drawn to substantially symmetrical faces having equivalent effective contact areas that deliver a same amount of a product. Applicant respectfully asserts that claim 6 is patentable over Utter

along with Applicant's amended claim 1, and respectfully requests that the rejection of claim 6 under 35 U.S.C. §103(a) be withdrawn.

Claims 10 and 16 have been rejected under 35 U.S.C. §103(a) as being anticipated by Utter. In rejecting claims 10 and 16, the Examiner asserts that Utter discloses a paddlewheel tang with a rounded crest. Applicant respectfully disagrees with the Examiner, as Utter only discloses paddlewheel tangs that come to a sharp point at an acute angle. Rounding of Utter's sharp point will not provide a rounded crest, as Utter does not have enough body width to provide a well-rounded tang as disclosed by Applicant. Applicant's invention is drawn to a rounded tang that has a same effective contact area as the other embodiments. Applicant respectfully asserts that if Utter does round his tangs in accordance with the Applicant's invention, he will be forced to shorten his tangs to the point that they will be ineffective, thereby rendering Utter's paddlewheel useless. Accordingly, Applicant respectfully asserts that claims 10 and 16 are patentable over Utter, and respectfully requests that the rejections of claims 10 and 16 under 35 U.S.C. §103(a) be withdrawn.

Claim 7 has been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form, including all of the limitations of the base claim, any intervening claims, and overcoming the 35 U.S.C. §112 rejection. Applicant, accordingly, has rewritten claim 7 in independent form, including all of the limitations of the base claim. Claim 7, as amended, is therefore, patentable.

Claim 15 has been objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form, including all of the limitations of the base claim, any intervening claims, and overcoming the 35 U.S.C. §112 rejection. Applicant, accordingly,

has rewritten claim 15 in independent form, including all of the limitations of the base claim.

Claim 15, as amended, is therefore, patentable.

The prior art made of record has been reviewed by Applicant and is deemed not to anticipate nor render obvious the claimed invention.

In view of the foregoing, Applicant respectfully requests reconsideration of the rejected claims, and solicits early allowance of the subject application.

Respectfully submitted,

LAW OFFICES OF CHRISTOPHER L. MAKAY
1634 Milam Building
115 East Travis Street
San Antonio, Texas 78205
(210) 472-3535

DATE: 4 April 2006

BY: 

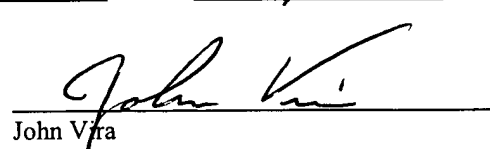
Christopher L. Makay
Reg. No. 34,475

ATTORNEY FOR APPLICANT

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 C.F.R. §1.10 on the date indicated below, addressed to the COMMISSIONER FOR PATENTS, P.O. Box 1450, Alexandria, VA. 22313-1450.

Express Mail No. EV847630054 US Date: 4 April 2006


John V. Fra